



**UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES**

DATE PREPARED: 2-28-83

RE: DEAN CLOWARD, CASE NO. 83-TLC-4

THIS IS A DECISION IN RESPONSE TO A REQUEST FOR DEAN CLOWARD FOR EXPEDITED ADMINISTRATIVE JUDICIAL REVIEW, PURSUANT TO 20 C.F.R. §656.212 OF A DENIAL OF HIS APPLICATION FOR TEMPORARY LABOR CERTIFICATION. THE APPLICATION IS FOR TEN SHEEPSHEARERS; TRAVELING SEVERAL WESTERN STATES FOR APPROXIMATELY THREE MONTHS STARTING MARCH 1, 1983. DEAN CLOWARD IS A SHEARING CONTRACTOR.

ON FEBRUARY 8, 1983, THE REGIONAL ADMINISTRATOR, (RA) DENIED CERTIFICATION. THIS DETERMINATION WAS BASED ON THE FACT THAT U.S. WORKERS WERE FOUND AVAILABLE IN THE OCCUPATION FOR WHICH CERTIFICATION WAS REQUESTED.

THE RA REPORTED SIXTY-EIGHT SHEARERS AVAILABLE FOR IMMEDIATE REFERRAL IN THE BRIGHTON, COLORADO AREA AND IN ADDITION FIFTEEN IN THE DEL RIO, TEXAS AREA. THE RA ALSO FOUND GROUNDS FOR DENIAL THE INCONSISTENCY OF THE CLEARANCE ORDER SIGNED BY CLOWARD PROVIDING FOR; SHEARING WITH POWER TOOLS OR HAND SHEARS. IN HIS APPEAL FROM THE RA'S DENIAL CLOWARD EXPRESSED A PREFERENCE FOR POWER TOOL SHEARERS ONLY AND THE MERITS OF TOOL SHEARERS AS OPPOSED TO HAND SHEARERS. THE PRIMARY CONSIDERATION IS WHETHER THERE ARE AVAILABLE AMERICAN WORKER'S FOR AMERICAN JOBS. UNDER 20 C.F.R. §655.206(a), "AVAILABLE" MEANS THOSE WHOM THE RA DETERMINES ARE VERY LIKELY TO SIGN A WORK CONTRACT WITH THE EMPLOYER AS WELL AS ANY U.S. WORKERS WHO HAS APPLIED TO THE EMPLOYER OR ON WHOSE BEHALF AN APPLICATION HAS BEEN MADE, BUT WHO WAS REJECTED BY THE EMPLOYER FOR OTHER THAN LAWFUL JOB-RELATED REASONS. THE RECORD DOES NOT INDICATE IF THE AVAILABLE AMERICAN WORKER'S HAVE BEEN INTERVIEWED.

20 C.F.R. §655.212(a) AUTHORIZES A HEARING OFFICER, IN ADMINISTRATIVE JUDICIAL REVIEW, TO CONSIDER ONLY THE LEGAL SUFFICIENCY OF THE RECORD UPON WHICH THE DENIAL OF LABOR CERTIFICATION WAS BASED. PARAGRAPH (b) OF THAT SECTION REQUIRES THE HEARING OFFICER TO RENDER

HIS DECISION IN FIVE DAYS. THE RECORD IS LEGALLY SUFFICIENT FOR A FINDING THAT THE EMPLOYERS FAILED TO DEMONSTRATE THAT A SHORTAGE OF U.S. WORKERS EXISTS TO FILL POSITIONS AS SHEEPSHEARERS AS MANDATED BY 20 C.F.R. §655.200(a) AND 655.206(a). THEREFORE, IN ACCORDANCE WITH 20 C.F.R. §655.204(c), THE RA WAS CORRECT IN DENYING LABOR CERTIFICATION.

THIS IS THE FINAL DECISION OF THE DEPARTMENT OF LABOR ON THIS MATTER . FURTHER REVIEW MAY BE OBTAINED BY FILING A PETITION WITH THE DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE IN YOUR GEOGRAPHICAL AREA PURSUANT TO 8 C.F.R. 2(h)(3)(i). THIS DECISION IS BEING TRANSMITTED TO LUIS SEPULVEDA, THE REGIONAL ADMINISTRATOR, T H E ADMINISTRATOR OF THE U.S. EMPLOYMENT SERVICE, AND THE DIRECTOR OF IMMIGRATION AND NATURALIZATION SERVICE.

Thomas G. Egan
Administrative Law Judge

TGE/det